SELVARAJU MUDALIAR KALLIPARAMAL A

v.

PP

COURT OF APPEAL, PUTRAJAYA B
SURIYADI HALIM OMAR JCA
HASAN LAH JCA
AHMAD MAAROP JCA
[CRIMINAL APPEAL NO: B-05-4-06]
2 JUNE 2010 C

CRIMINAL LAW: *Murder - Defence - Unsoundness of mind - Appellant suffering from schizophrenia - Whether appellant unaware of his actions - Whether appellant in command of mental faculties when killing the deceased - Incumbent on prosecution to establish that appellant had indeed taken his medication - Prosecution failed to do so - Whether appellant had established his defence of unsoundness of mind and thus not capable of knowing that his act was wrong or contrary to law* D

The accused ("appellant"), an inmate of a drug rehabilitation centre E was charged for the murder of a fellow inmate, one Sivalingam Subramaniam (the deceased) under s. 302 of the Penal Code. The cause of death was put as severe head injuries sustained by the deceased from a heavy blow to the head. The prosecution attempted to establish the fact that at the time of the commission of the F offence the appellant was sane and knew the consequences of his act *ie*, although the appellant was a schizophrenic patient his mental condition was stable at the time of the killing. As the learned judge was satisfied with the evidence adduced by the prosecution, and being satisfied that a *prima facie* case had been established, called G upon him to enter his defence. The learned judge concluded that there was no dispute that the deceased died as a result of severe head injury due to a heavy blow on the head, inflicted by the appellant with a cangkul and that the appellant intended to inflict injury on the deceased. The learned judge further held that there H was no evidence adduced by the appellant indicating a relapse of his mental illness at any time prior to the incident let alone on the day of the incident. Whatever mental illness the appellant was suffering had been treated and stabilised, even had he failed to take his medicine or failed to take the required dosage as prescribed. There I was also no evidence available to suggest that at the moment of

striking the deceased with the cangkul, the appellant was incapable of knowing the errors of his act or that it was contrary to law. He made a finding that the appellant had failed to establish the defence of unsound mind. At the end of the trial the High Court judge found the accused guilty of the offence of murder, convicted him and sentenced him to death. The appellant appealed to the Court of Appeal against the conviction and sentence.

Held (appellant of unsound mind; to be kept in safe custody at Hospital Bahagia)

Per Suriyadi Halim Omar JCA delivering the judgment of the court:

(1) The learned judge had misdirected himself as regards the evidence pertaining to the appellant being of sound mind, when striking the deceased. The positive assertion of the learned judge that there was no evidence of the appellant having a relapse prior to the incident, let alone, on the date of the incident and that the appellant had been treated, and that his failure to take his medicine on some occasion, or had failed to take the required dosage as prescribed, was of no consequence, was without basis and a misdirection. (paras 22 & 28)

(2) As the appellant still needed the prescription, it followed that he was still not cured of his schizophrenia. As per the consultant forensic psychiatrist from Hospital Bahagia Ulu Kinta's testimony, unless the appellant took his prescription, he would suffer a relapse and thus suffer the full blown effect of his schizophrenic sufferings. There was no evidence to positively establish that he indeed had complied with the prescription and the dosage on 12 March 2001. Without any evidence to this effect, the court was therefore in reasonable doubt as to whether he was in command of his mental faculties when he killed the deceased. *Mat v. Public Prosecutor* (refd). (paras 32 & 33)

(3) The court was satisfied on a balance of probability that the appellant had established his defence of unsoundness of mind and thus not capable of knowing that his act was wrong or contrary to law. The court finds that (i) at the time at which the appellant was alleged to have committed the offence, he was by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, as per

the charge; (ii) the appellant did commit the act of killing the deceased; and therefore ordered him to be kept in safe custody at Hospital Bahagia and this order be reported to the Ruler of the State. (para 33)

Bahasa Malaysia *Translation Of Headnotes*

Tertuduh (perayu), seorang banduan di Pusat Serenti, telah dituduh membunuh rakan sepenjaranya, satu Sivalingam Subramaniam ('simati') di bawah s. 302 Kanun Keseksaan. Sebab kematian adalah kecederaan teruk di bahagian kepala atas hentakan yang kuat. Pihak pendakwaan cuba untuk membuktikan fakta bahawa pada masa kesalahan dilakukan perayu adalah berwaspada dan mengetahui akibat kelakuannya, iaitu, walaupun perayu adalah pesakit schizophrenic keadaan mental perayu adalah stabil pada masa pembunuhan. Yang arif hakim berpuas hati dengan keterangan yang diberi oleh pihak pendakwaan, dan kerana puas hati bahawa kes *prima facie* telah dibuktikan, telah memanggil perayu untuk memasukkan pembelaan. Yang arif hakim membuat kesimpulan bahawa tidak terdapat pertikaian bahawa simati telah meninggal akibat kecederaan teruk di bahagian kepala atas hentakan yang kuat, yang telah dilakukan oleh perayu dengan cangkul dan perayu telah berniat untuk melukakan simati. Yang arif hakim juga memutuskan bahawa tidak terdapat keterangan yang diberi oleh perayu yang menunjukkan bahawa penyakit mental perayu telah kembali pada bila-bila masa sebelum kejadian itu lebih-lebih lagi pada hari kejadian tersebut. Penyakit mental yang dialami perayu telah diubat dan distabilkan, walaupun perayu gagal mengambil ubat-ubatan atau gagal untuk mengambil sukatan ubat yang diperlukan. Juga tidak terdapat keterangan untuk mencadangkan bahawa pada masa simati dipukul oleh cangkul, perayu tidak mengetahui kesalahan tindakannya atau bahawa ia melanggar undang-undang. Hakim telah membuat keputusan bahawa perayu telah gagal membuktikan pembelaan hilang akal. Di akhir perbicaraan hakim Mahkamah Tinggi mendapati bahawa tertuduh telah melakukan kesalahan membunuh, menyabitkannya dan menjatuhkan hukuman mati. Perayu merayu kepada Mahkamah Rayuan terhadap sabitan dan hukuman.

Diputuskan (perayu didapati mengalami penyakit hilang akal; memerintah perayu ditahan di bawah jagaan Hospital Bahagia) Oleh Suriyadi Halim Omar HMR menyampaikan penghakiman mahkamah:

(1) Yang arif hakim telah tersalah arah mengenai keterangan bahawa perayu berada dalam keadaan waras, apabila menghentak simati. Pengataan asertif yang arif hakim bahawa tidak terdapat keterangan bahawa perayu telah mengalami penyakit hilang akal sebelum kejadiaan, lebih-lebih lagi, pada tarikh kejadian dan bahawa perayu telah diubati dan kegagalannya mengambil ubat-ubatan pada beberapa masa, atau kegagalannya mengambil sukatan ubat yang diperlukan, bahawa ia tidak berkesan, adalah tanpa asas dan satu salah arahan.

(2) Perayu masih memerlukan preskripsi, oleh itu beliau belum lagi sembuh dari penyakit schizophrenia. Mengikut testimoni perunding pakar forensik dari Hospital Bahagia Ulu Kinta, jikalau perayu tidak mengambil preskripsi, beliau akan mengalami penyakit mental itu dan akan mengalami efek sepenuhnya penderitaan schizophrenic. Tidak terdapat keterangan untuk membuktikan bahawa perayu telah mengikut preskripsi dan sukatan pada 12 Mac 2001. Tanpa keterangan mengenai perkara itu, mahkamah mempunyai keraguan munasabah sama ada perayu dapat mengawal keupayaan mental dirinya apabila beliau membunuh simati. *Mat v. PP* (dirujuk).

(3) Mahkamah berpuas hati atas imbangan kebarangkalian bahawa perayu telah membuktikan pembelaan hilang akal dan oleh itu tidak berupaya mengetahui bahawa tindakannya adalah salah atau melanggar undang-undang. Mahkamah memutuskan (i) pada masa perayu didakwa melakukan kesalahan itu, beliau berada dalam keadaan hilang akal, tidak berupaya mengetahui sifat perbuatannya atau ia adalah salah atau melanggar undang-undang, seperti di dalam pertuduhan; (ii) perayu telah melakukan kesalahan membunuh simati; oleh itu memerintahnya ditahan di bawah jagaan Hospital Bahagia dan perintah ini dilaporkan ke Raja Kerajaan Negeri.

Case(s) referred to:

Baharom v. PP [1960] 1 LNS 9 HC ***(refd)***

Bhikari v. State of Uttar Pradesh [1966] AIR 1 ***(refd)***

Dr M Mahadevan Mahalingam v. S Lourdenadin & Another Case [1988] 2 CLJ 601; [1988] 1 CLJ (Rep) 168 SC ***(refd)***

Goh Yoke v. PP [1969] 1 LNS 48 FC ***(refd)***

John Nyumbei v. PP [2007] 2 CLJ 509 CA ***(refd)***
Juraimi Husin v. PP [1998] 2 CLJ 383 CA ***(refd)***
Krishnan Ramar v. PP [1987] 1 CLJ 28; [1987] CLJ (Rep) 145 SC ***(refd)***
Mat v. PP [1963] 1 LNS 82 HC ***(refd)***
PP v. Zainal Abidin Mohd Zaid [1993] 1 CLJ 147 HC ***(refd)***
Rajagopal v. PP [1976] 1 LNS 122 FC ***(refd)***
Woolmington v. DPP [1935] AC 462 ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 112
Evidence Act 1950, ss. 105, 167
Penal Code, ss. 84, 300, 302

For the appellant - M Visvanathan; M/s Saibullah MV Nathan & Co
For the respondent - Saiful Edris Zainuddin, AG's Chambers

[Appeal from High Court, Shah Alam; Criminal Case No: 45-0-2001]

[Editor's note: For the High Court judgment, please see PP v. Selvaraju Mudaliar Kalliparamal [2005] 8 CLJ 534]

Reported by Susheila Sreedharan

JUDGMENT

Suriyadi Halim Omar JCA:

[1] The accused person, an inmate of a drug rehabilitation centre was charged for the murder of a fellow inmate, one Sivalingam a/l Subramaniam (the deceased) under s. 302 of the Penal Code. The charge reads as follows:

> Bahawa kamu, pada 12 Mac 2001, jam lebih kurang 10.40 pagi di Asrama Bakawali 3, Pusat Serenti Dengkil, Dengkil, di dalam Daerah Sepang, dalam Negeri Selangor Darul Ehsan telah melakukan bunuh dengan menyebabkan kematian terhadap Sivalingam a/l Subramaniam (K/P: A1117291), dan dengan itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

[2] At the end of the trial the learned judge found the accused person guilty of the offence, convicted him and passed the death sentence as provided for under the law. He, hereinafter referred to as the appellant, filed an appeal against the conviction and sentence imposed.

[3] The facts and the evidence are as follows:

[4] The appellant and the deceased occupied the same hostel, known as 'Asrama Bakawali 3' (the hostel) at Pusat Serenti Dengkil. A prosecution's witness SP6 testified that at about 9.30am on 12 March 2001 while watching the television in the hostel he heard a knocking sound on a bed. He turned his head towards the sound and saw the deceased holding his bleeding leg though still standing, whilst the appellant was holding a cangkul.

[5] He then saw the appellant swinging the cangkul and striking the deceased's head. Thereupon the appellant left the hostel, and when asked by SP6 "apa pasal (why?)", he was told by the appellant "tak payah tanya. Hantar dia ke hospital (Don't ask. Send him to the hospital)." The appellant then made a run for it, after placing the cangkul beside a nearby drain, merely 40 feet away from the hostel. However, two other inmates, namely Mutalib and Daud, managed to prevent him from running away. These two persons, being HIV victims, did not give evidence as they had passed away by the time the trial was underway.

[6] SP3, an auxiliary police officer attached to the Pusat Serenti Dengkil testified that on that fateful day at about 10.40am, he found many inmates gathered at the hostel. Upon reaching the room, he found the deceased lying on his bed, with his leg and right side of his head covered with blood, but still alive. The deceased was then sent to the clinic but succumbed to the injuries.

[7] SP7, one Dr Nurliza bt Abdullah, the Forensic Pathologist who performed a post mortem on the deceased, confirmed that the examination revealed a deep incised wound on the head, which had sliced the underlying skull bone. That had caused internal injuries to the brain resulting in his demise. There were no other underlying causes which contributed to the death. The cause of death was put as severe head injuries sustained by the deceased from a heavy blow to the head. The DNA analysis conducted by SP4 confirmed that the DNA profile on the blood stains from the cangkul was consistent with the DNA profile of the blood specimen of the deceased.

[8] The prosecution when attempting to establish a *prima facie* case took a rather novel course of action when it called one Dr Rabaiah (SP5), the Consultant Forensic Psychiatrist of Hospital

Bahagia at Ulu Kinta, as one of its witnesses. We could only assume that the prosecution wanted to anticipate the appellant's defence of insanity and ensure the calling of his defence by calling this witness. In a gist it must have wanted to nib the appellant's case in the bud. In her testimony, SP5 testified that:

> Setelah lebih kurang 2 1/2 bulan beliau bersama kami di Hospital Bahagia, kesimpulan saya ialah: 1) OKT ada mempunyai gejala-gejala penyakit mental yang dinamakan Skizofrenia. Beliau juga sedang menerima rawatan untuk kemurungan. 2) Walau bagaimanapun, saya juga berpendapat bahawa di masa kejadian pada 12/3/2001, penyakit mental beliau di dalam keadaan stabil dan beliau sedar akan akibat daripada perbuatannya.

[9] The purpose of the above testimony by SP5 was without any doubt an attempt by the prosecution to establish the fact that at the time of the commission of the offence the appellant was sane and knew the consequences of his act. In a word even though the appellant was a schizophrenic patient his mental condition was stable at the time of the killing.

[10] Under s. 105 of the Evidence Act 1950, as provided for in illustration (a), the burden of proving that by reason of unsoundness of mind he did not know the nature of the act rests on the accused person. Mahadev Shanker J in *PP v. Zainal Abidin Mohd Zaid* [1993] 1 CLJ 147 had occasion, in his *obiter dicta*, to suggest that in simple and straightforward non-jury trials defence counsel should raise the defence of insanity immediately after the charge is read. Here the appellant did not have the opportunity to raise the defence of unsound mind as he was pre-empted by the evidence of the prosecution. Whether by inadvertence or miscalculation, SP5's testimony had made matters easy for the appellant, as even before the defence was called the court was informed of his affliction and of his probable defence. It took away any tactical submission that the issue of unsoundness of mind was an afterthought defence. Despite this inadvertent admission of the appellant's defence such a premature admission of evidence was not a ground for us to nullify the trial (s. 167 of the Evidence Act 1950; *Krishnan Ramar v. PP* [1987] 1 CLJ 28; [1987] CLJ (Rep) 145). This admission by the prosecution as regards his mental affliction would play a major role in our explanation on the eventual findings.

[11] Despite this affliction it was still held by the learned judge that the prosecution had made out a *prima facie* case against the appellant and had called upon him to enter his defence. By calling the defence, implying he was sane, the onus shifted to the appellant to disprove his sanity.

[12] At the defence stage, in order to rebut the presumption that he was of sound mind, the appellant took a rather simple and straightforward approach (*Bhikari v. State of Uttar Pradesh* [1966] AIR 1). He called no witnesses to support his testimony. His version was that on 12 March 2001, he took a cangkul and hit the deceased, and thereafter left the hostel but remained outside. He failed to remember what he did when he was standing outside the hostel. He admitted knowing the deceased for two months prior to the incident, but alleged that the latter always teased, disturbed and hit him. Prior to the incident, he never quarrelled with the deceased. Under cross examination, being angry at the behaviour of the deceased, he testified that he only wanted to hurt the deceased but certainly not to kill.

Findings Of The Learned Judge At The End Of The Defence Stage

[13] As the learned judge was satisfied with the evidence adduced by the prosecution, and being satisfied that a *prima facie* case had been established, called upon him to enter his defence. In his grounds of judgment, apart from discussing the evidence adduced by the appellant, the learned judge had also re-evaluated the earlier prosecution's evidence.

[14] The learned judge had concluded that there was no dispute that the deceased died as a result of severe head injury due to a heavy blow on the head, inflicted by the appellant with a cangkul. There was also no dispute that the appellant intended to inflict injury on the deceased. The learned judge then went on the exercise of resolving whether the defence of unsound mind had been established on a balance of probability now that the defence had been called. The onus being on the appellant to satisfy the court on a balance of probability, in order to succeed in a defence of unsound mind, in the sense required by s. 84 of the Penal Code, that was needless to say a correct statement of law (*PP v. Zainal Abidin Mohd Zaid* [1993] 1 CLJ 147; *Rajagopal v. PP* [1976] 1 LNS 122; *Goh Yoke v. PP* [1969] 1 LNS 48).

[15] In the course of opining whether the appellant had successfully established the defence, the learned judge began by stating that the evidence of the consultant forensic psychiatrist from Hospital Bahagia Ulu Kinta ie, SP5, was not challenged. Indisputably no rebuttal medical expert evidence was admitted by the appellant. Learned counsel for the appellant ventilated that poverty was the reason for his inability to obtain the aid of another expert to counter SP5's evidence. On the other hand, SP5's evidence was tainted as in the course of the hearing it transpired that she had sight of the appellant's cautioned statement prior to formulating an opinion of his mental capacity. We could only imagine the tilted effect the contents of the cautioned statement had on the mind of the doctor. To make matters worse this highly relevant document was never tendered into court, evidence which could equally have helped the appellant's cause. This witness obviously did not impress us as a model witness as she had also made some conflicting remarks in the course of the hearing as regards the mental capacity of the appellant. More of this later.

[16] The learned judge further held that there was no evidence adduced by the appellant indicating a relapse of his mental illness at any time prior to the incident, let alone on the day of the incident.

[17] He then took a bolder step by stating that whatever mental illness the appellant was suffering had been treated and stabilised, even had he failed to take his medicine or failed to take the required dosage as prescribed. There was also no evidence available to suggest that at the moment of striking the deceased with the cangkul, the appellant was incapable of knowing the errors of his act or that it was contrary to law.

[18] In the course of supporting his finding that the appellant had failed to establish the defence of unsound mind, the learned judge had also alluded to D25, a piece of evidence adduced by the appellant. This is a witness statement (D25) recorded under s. 112 of the Criminal Procedure Code, and tendered at the defence stage, and of which the learned judge commented:

> It is clear, upon consideration of the statement of Arishah bin Zakariah, as a whole, the accused was normal at all material times because he was adequately observed, treated and medicated for his mental illness.

[19] It was also obvious from our reading that the learned judge was highly influenced by the testimony of the appellant that he wanted retribution and wanted to injure the deceased. The factor of the appellant wanting to escape, and would have succeeded, had he not been prevented by two inmates had indeed played in the mind of the learned judge.

[20] To justify further the conviction, perhaps for comprehensiveness, the learned judge also discussed the defence of provocation. He summarised that the last occasion the deceased disturbed the appellant was the afternoon of 11 March 2001, whilst the incident happened at about 10.40am on 12 March 2001. He held the view that, with there being a cooling-off period, such a disturbance could not amount to a grave and sudden provocation, capable of depriving the appellant of self control. He thus ruled that the defence of provocation alleged by the appellant was a fabrication and an after-thought and accordingly rejected it.

[21] With the appellant failing to establish that his conduct fell within the exception of 1 of s. 300 of the Penal Code, and thus failing to cast any doubt on the prosecution's case, the prosecution thus had successfully established its case against the appellant on the basis of beyond reasonable doubt. He thenceforth found him guilty of the offence of murder and accordingly sentenced him to death.

This Panel's Views

[22] Despite the clarity of the grounds of judgment, we had misgivings with the findings of the learned judge pertaining to his conclusions that the appellant was of sound mind, when striking the deceased. We held the view that the learned judge had misdirected himself as regards the evidence pertaining to this highly pertinent matter. Our reasons for the difference of view are manifold, and are as follows.

[23] We begin by stating the obvious that the appellant's defence was that he was of unsound mind on that relevant date as he could not remember taking his prescription. This prescribed defence is legislated at s. 84 of the Penal Code, and it reads:

> Act of a person of unsound mind
>
> 84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

[24] To succeed, the appellant therefore has to establish that at the time of the commission of the act, by reason of unsoundness of mind, was incapable of knowing the nature of the act, or incapable of knowing what he was doing as wrong or contrary to law. The learned judge had correctly stated that the question whether the appellant was suffering from such an affliction at the time of the commission of the act was determinable not only by medical evidence and expert opinion, but also by his conduct and the state of his mind before and after the crucial time (*John Nyumbei v. PP* [2007] 2 CLJ 509). This legal insanity defence depends very much on the evidence.

[25] Even though it was incumbent upon the appellant to establish the defence of unsoundness of mind at the earliest stage, but as stated earlier, his work was cut out for him when the prosecution through SP5 divulged that he was a mental patient (*Juraimi Husin v. PP* [1998] 2 CLJ 383; *Baharom v. PP* [1960] 1 LNS 9). Apart from revealing his schizophrenia, SP5 divulged that the appellant had received psychiatric attention from several psychiatrists not only prior to the incident, but also after it. She evinced that the appellant received medication from Banting Hospital on 21 February 2001 not only for schizophrenia but also secondary depression.

[26] Pertaining to the mainstream defence the appellant had testified that at the material time when he assaulted the deceased he could not remember whether he had taken his prescription, or for that matter the required dosage. By implication due to that failure he had suffered a relapse. This statement is pertinent to the appellant's defence as SP5 in the course of the examination had occasion to say:

> If a person who is suffering from schizophrenia and is not taking medication it is possible that he may not be aware of the consequences of his action.

[27] The above statement was elicited at the prosecution's stage. Since it was the prosecution's stance that the appellant was of sound mind on 12 March 2001, though SP5 had categorically stated that if a patient failed to take his medication he would suffer a relapse and hence be unaware of his actions, it then became incumbent on the prosecution to establish that the appellant had indeed taken his medication. This, the prosecution failed to do.

[28] As aforesaid the learned judge had held that there was no evidence of the appellant having a relapse prior to the incident, let alone, on the date of the incident. He even concluded that the appellant had been treated, and his failure to take his medicine on some occasion, or had failed to take the required dosage as prescribed, was of no consequence. These were positive conclusions which went against the evidence of SP5. The latter in crystal clear terms had testified that she had prescribed anti-depressants and anti-psychotics medicine to the appellant commencing 2 May 2003 at Hospital Bahagia. Surely if he was cured of his medical problems he would not have need of such prescriptions? This witness, who had interviewed the appellant two years after the incident, and not knowing whether he had taken the medicine supplied by Hospital Banting, was unable to say with any certainty whether the accused was suffering from a relapse of his illness on 12 March 2001 at 10.40am. Since SP5 was the prosecution's witness it must be bound by her evidence (*Dr M Mahadevan Mahalingam v. S Lourdenadin & Another Case* [1988] 2 CLJ 601; [1988] 1 CLJ (Rep) 168). With the prosecution being bound by this consultant's testimony, and with such obvious hesitancy and uncertainty on her part, the positive assertion of the learned judge therefore was without basis and a misdirection.

[29] With the inadvertent self-debilitating evidence adduced by the prosecution, the appellant thus should have been acquitted without his defence being called and forthwith set free. Obviously this was the unexpected counter-productive effect on the prosecution's case, for being overly innovative in the hope of nipping the appellant's defence in the bud. Had it not been for his consistent plea of being mentally unsound when committing the act, which tantamount to a plea of guilt, but deserving a detention at Hospital Bahagia, he could have walked away a free man.

[30] On the unlikely premise that the learned judge did not err when concluding a *prima facie* case was successfully established, the onus then had shifted to the appellant to rebut the prosecution's case. If he failed to establish that he did not take his medicine on that fateful day, on a balance of probability premise he thus would be left defenceless (*Woolmington v. DPP* [1935] AC 462).

[31] From the aspect of the defence, what then was the other additional evidence that could have saved him ie, apart from the earlier mentioned evidence of SP5? Beginning with his testimony at RR 81 and 82, where he testified of not remembering taking his medicine, there was the evidence of SP6 and the documentary

evidence of D25. SP6, a prosecution's witness, in no uncertain terms had testified that he was scared of the appellant as he knew the latter was insane ("tidak siuman"). Next we have D25, a statement taken from one Arishah bin Zakaria, a medical assistant at the Serenti Rehabilitation Centre at Dengkil, who confirmed that there were times when the appellant did not come to take his medicine and at times did not comply with the prescribed dosage (Adakalanya dia tidak datang untuk ambil ubatnya dan adakala dia tidak ikut dosage yang di berikan kepadanya).

Conclusion

[32] Without the need of much legal deliberation or judicial activism it was obvious to us that, as the appellant still needed the prescription, it logically followed that he was still not cured of his schizophrenia. As testified by SP5, unless he took his prescription, he would suffer a relapse and thus suffer the full blown effect of his schizophrenic sufferings. Evidentially we found no evidence to positively establish that he indeed had complied with the prescription and the dosage.

[33] Without there being any evidence adduced to establish that he took the prescription and the prescribed dosage on 12 March 2001, *vis-a-vis* the substantive evidence available to indicate that he most probably did not take the medicine whether by inference or otherwise, we were therefore in reasonable doubt as to whether he was in command of his mental faculties when he killed the deceased person (by analogy see *Mat v. PP* [1963] 1 LNS 82). On that premise we were therefore satisfied on a balance of probability that the appellant had established his defence of unsoundness of mind and thus not capable of knowing that his act was wrong or contrary to law. Our consequential orders that ensued were as follows:

1. "this court finds that at the time at which he was alleged to have committed the offence, he was by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, as per the charge. We find that he did commit the act of killing the deceased person; and

2. we therefore order him to be kept in safe custody at Hospital Bahagia and this order be reported to the Ruler of the State."